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RELEASED IN PART **E116**  
B1, 1.4(D)

ACTION WHA-00

INFO	LOG-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00	EB-00
	H-00	TEDE-00	INR-00	IO-00	JUSE-00	L-00	AC-00
	NSAE-00	OIC-00	PA-00	MCC-00	PRS-00	ACE-00	P-00
	FMPC-00	SP-00	IRM-00	SS-00	STR-00	TRSE-00	PRM-00
	DRL-00	G-00	SAS-00	/000W			

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P 052008Z NOV 04  
FM AMEMBASSY CARACAS  
TO SECSTATE WASHDC PRIORITY 8296  
INFO AMEMBASSY BOGOTA PRIORITY  
AMEMBASSY LA PAZ PRIORITY  
AMEMBASSY LIMA PRIORITY  
AMEMBASSY QUITO PRIORITY  
NSC WASHDC PRIORITY  
HQ USSOUTHCOM MIAMI FL PRIORITY

C O N F I D E N T I A L CARACAS 003431

NSC FOR CBARTON  
USCINCSO ALSO FOR POLAD

E.O. 12958: DECL: 11/05/2014  
TAGS: PHUM, KJUS, VE  
SUBJECT: VENEZUELA JUDICIAL UPDATE: CASES DISMISSED, NEW  
INVESTIGATIONS

REF: CARACAS 03219

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d  
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Summary  
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1. (C) A Caracas Appeals Court overturned the conviction of National Guard Gen. Carlos Alfonzo Martinez on November 1 on grounds that the actions alleged by the prosecutor did not constitute a crime under Venezuela's Penal Code. The same court, citing similar grounds, dismissed the charges against Baruta Mayor Henrique Capriles on October 18. Prosecutor Danilo Anderson announced November 4 that he would open an investigation of former Mayor of Greater Caracas Alfredo Pena and the capital's two highest ranking police officials for murder in relation to the events of April 11, 2002. Prosecutors also began investigating corruption allegations against Pena October 27. Anderson has opened investigations

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against 28 persons, alleging civil rebellion in relation to the Carmona decree issued on April 12, 2002. On November 1 a military prosecutor suspended his investigation of the journalist Patricia Poleo for releasing a video allegedly of Cubans at a military base. End Summary.

### ----- Capriles and Alfonzo Martinez Cases Thrown Out -----

2. (U) The Second Appeals Court overturned the conviction of Gen. Carlos Alfonzo Martinez for violating security zones on November 1, on the grounds that the act allegedly committed by the general -- giving a speech to opposition demonstrators in front of National Guard headquarters -- is protected by the constitution and international treaties under freedom of speech. The same Court threw out charges against Baruta Mayor Henrique Capriles on October 18, ruling that the events which the prosecution alleged took place were not criminal acts under the Penal Code. The Court released Capriles from the restrictions he was under as conditions of bail. In both cases the prosecution said it would appeal, but no action has been taken. On November 3 Judicial Inspectors visited the appeals court to investigate how the Alfonzo Martinez decision was leaked to the press.

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### ----- Anderson Goes After Pena -----

4. (C) On November 4 Prosecutor Danilo Anderson told

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reporters he had opened an investigation against Greater Caracas Mayor Alfredo Pena, the Metropolitan Secretary for Security Henry Vivas, and the Chief of the Metropolitan Police, Lazaro Forero, as the intellectual authors of the violence on April 11, 2002. Vivas was chief of the Metropolitan Police at the time, and Forero his deputy. The eight Metropolitan Police officers who have been in custody for eleven months charged with the deaths that occurred in April 2002 have begun to negotiate with Anderson, offering to cooperate in the investigation. Prosecutors also opened an investigation against Pena on October 27 for corruption, after he withdrew from mayor's race. Pena is presently in the U.S.

### ----- While Continuing Carmona Investigation -----

5. (U) Anderson has also opened investigations for civil rebellion against 28 persons of the 400 he expects to prosecute for their alleged participation in the proclamation of the Carmona Decree (see reftel), and has announced his intention to begin calling eight persons a day to be informed of the investigation to speed up the process. Anderson told reporters on November 4 that he did not intend to pursue an investigation against reelected Zulia Gov. Manuel Rosales for the moment, because it would require special permission from the Supreme Court and the National Assembly.

### ----- Poleo Investigation Closed -----

6. (U) Military Prosecutor General Eladio Aponte Aponte November 1 suspended the investigation of journalist Patricia Poleo in relation to her release of a video purporting to show Cubans in Venezuela's main military base, Fuerte Tiuna. The action releases Poleo from court-imposed travel restrictions.

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